



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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SENT ELECTRONICALLY AND VIA FEDEX

December 23, 2015

USDA Forest Service
Attn: Appeal Reviewing Officer
210 14TH Street, SW
EMC-LEAP, Mailstop 1104
Washington, DC 20250

Electronic Submission via e-mail: appeals-chief@fs.fed.us

Re: Notice of appeal filed pursuant to Optional Appeal Procedures, 36 CFR 219.7(b)(3) (2012 planning rule) and 36 CFR 219.35, Appendix A (2000 planning rule, as amended July 2010).

Apache-Sitgreaves National Forests Land Management Plan Programmatic Final Environmental Impact Statement (MB-R3-01-11, August 2015) (Calvin Joyner, Regional Forester) and Land Management Plan for the Apache-Sitgreaves National Forests (MB-R3-01-10, August 2015)

Appellant's Name and Address:

The Arizona Game and Fish Department
5000 West Carefree Highway
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To the Appeal Reviewing Officer:

The Arizona Game and Fish Department (Department) appreciated the opportunity to work with the Apache-Sitgreaves National Forests (A-S) throughout the development of the *Land Management Plan for the Apache-Sitgreaves National Forests* (LMP) and associated *Programmatic Final Environmental Impact Statement* (EIS). We sincerely value the partnership and working relationship we maintain with the A-S. However, certain critical issues raised by the Department during the process have not been adequately addressed and the Forest's listing of Brown Trout (*Salmo trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) as "major invasive species" in the A-S is a new issue not addressed in the EIS or the LMP. The Department is therefore appealing the LMP and the associated EIS.

The Department's appeal covers three areas, presented below in three sections. Section 1 (issues 1 through 5), relates to concerns about impacts to sport fish and aquatic species management by the Department. Section 2 (issues 6 and 7), relates to elk and the attribution of lack of aspen regeneration solely to elk browsing; and Section 3 (issue 8) addresses concerns related to recommended wilderness designations.

In an effort to further discuss the issues presented here, and explore opportunities to resolve the issues contained in this notice of appeal, the Department requests a meeting with the Appeal Deciding Officer.

SECTION 1: IMPACTS TO SPORT FISH AND AQUATIC SPECIES MANAGEMENT

Portion of the decision to which appellant objects

Issue No. 1: The identification by the United States Department of Agriculture Forest Service Southwestern Region (USFS) of Rainbow Trout and Brown Trout as “major aquatic invasive species” in the Apache-Sitgreaves NFs.

The Department objects to the statement in the USFS *Review and Assessment of Programs for Invasive Species Management in the Southwestern Region, 2012* (August 2012, attached), which identifies Rainbow Trout and Brown Trout as “major invasive species” that “require an effective response to minimize their presence and impacts” in the A-S, and the statement in *Guidance for Invasive Species Management in the Southwestern Region* (June 2014, attached) which describes trout as “major aquatic invasive species”, as those documents relate to the LMP.

Reasons for objecting

Nowhere in the LMP are Rainbow Trout or Brown Trout described or referenced as an invasive species.

The EIS lists Rainbow Trout and Brown Trout as “nonnative fish” in the A-S. Page 101-102. The EIS further states that nonnative species present a significant threat to all native fish species but also recognizes that most of the streams and lakes on the A-S are stocked and managed by the Department for “socially desirable” sport fish (Page 116) and “extensive and highly desirable recreational fishing opportunities” (Page 143). In the EIS *Appendix A. Public Comments and Responses* A-S recognizes the social and economic values associated with recreational sport fishing. Page 632.

The LMP identifies the continued presence of nonnative sport fish species for recreational fishing where not in conflict with recovery of native species as a “Desired Condition”. Page 26. One of the “Desired Conditions” in the EIS is habitat quality, distribution, and abundance to support the continued existence of all native and desirable nonnative species”. EIS, Ch. 3 at 118.

The LMP defines invasive species as nonnative plants and animals that cause, or have the potential to cause, ecological or economic harm. The only invasive aquatic animal species referenced by name in the LMP are bullfrogs and crayfish. Page 5.

The Department first became aware of the USFS's classification of Brown Trout and Rainbow Trout as a "major aquatic invasive species" present in the A-S in October 2015, when the Department received a form letter from Regional Forester Calvin Joyner announcing the Forest's new website for invasive species associated with the Southwest, http://www.fs.usda.gov/detail/r3/forest-grasslandhealth/invasive_species/ and Department staff reviewed links on the webpage.

One of the linked documents on this website, *Review and Assessment of Programs for Invasive Species Management in the Southwestern Region, 2012* (August 2012), identifies Rainbow Trout and Brown Trout as "major invasive species" that "require an effective response to minimize their presence and impacts" in the Apache-Sitgreaves, Coronado, Tonto, and Gila NFs.

Another linked document, *Guidance for Invasive Species Management in the Southwestern Region* (June 2014) describes "various species of trout, catfish, sunfish, pike and bass" as "major aquatic invasive species" (Page 14). The USFS's *National Strategic Framework for Invasive Species Management* (August 2013, attached) includes as objectives the prevention, detection, control and management of invasive species into U.S. forest and rangeland ecosystems (Page 15).

The Department has no record of any communication from the USFS or A-S alerting the Department to the classification of sport fish on the A-S as an invasive species when these reports were created in 2012 and 2014. The Forest did not consult with or coordinate with the Department pursuant to the *Master Memorandum of Understanding Between the U. S. Department of Agriculture, Forest Service, Southwestern Region and the Arizona Game and Fish Commission and Department* (Master MOU) (February 2010, attached).

In the Master MOU, the USFS agrees to recognize the Commission and Department as having primary responsibility for managing fish and wildlife populations consistent with state and federal law. The Parties further mutually agreed to coordinate efforts to ensure continued conservation of the State's fish and wildlife species, including Species of Economic and Recreational Importance.

The Department responded to the Forest's form letter announcing the new invasive species website in a letter dated October 15, 2015 (attached), by expressing its concern and need for further discussion with the Forest regarding the inclusion of sport fish on the Forest's list of major invasive species for several Arizona national forests, including the A-S.

As the classification of Brown Trout and Rainbow Trout as an invasive aquatic species is not discussed in the EIS or LMP, this is an issue that arose after the opportunity for formal comment. 36 CFR 219.53(a). The Department is entitled to supplement the Administrative Record to add

documents relevant to this new issue. The documents submitted to record by the Department are as follows:

1. *Forest Service National Strategic Framework for Invasive Species Management*
2. *Guidance for Invasive Species Management in the Southwestern Region*
3. *Review and Assessment of Programs for Invasive Species Management in the Southwestern Region, 2012*
4. *Department letter dated October 15, 2015 to Cal Joyner responding to form letter re website*
5. *Arizona Game and Fish Department Sport Fish Stocking Program: Final Environmental Assessment*
6. *Biological Assessment of the Arizona Game and Fish Department's Statewide and Urban Fisheries Stocking Program for the Years 2011-2021*
7. *Biological and Conference Opinion for Wildlife and Sport Fish Restoration Funding of Arizona Game and Fish Department's Statewide and Urban Fisheries Stocking Program for 2011-2021*
8. *Finding of No Significant Impact Providing Grant Funds for Arizona Game and Fish Department's Sport Fish Stocking Program*
9. *Master Memorandum of Understanding between the U.S. Department of Agriculture Forest Service Southwest Region and the Arizona Game and Fish Commission and Department*
10. *2013 Economic Impact of Fishing in Arizona*
11. *Arizona Angler's Opinions, Attitudes, and Expenditures in the State, 2014*
12. *License Sales – Historical Summary dated May 28, 2015*
13. *Estimated 2015 Fishing License Revenues*
14. *SFR Apportionments and Sales thru Fed FY14*
15. *2013 Arizona Angler User Days, Fishing Economics and Angler Demographics*

Violations of Law.

A. The Forest's identification of Brown Trout and Rainbow Trout as an invasive aquatic species directly conflicts with state law

This classification fails to acknowledge the Department's management authority over fish species in the state and violates state law. Arizona Revised Statutes § 17-255 states:

In this article, unless the context otherwise requires, "aquatic invasive species":

1. Means any aquatic species that is not native to the ecosystem under consideration and whose introduction or presence in this state may cause economic or environmental harm or harm to human health.

2. Does not include:

(a) Any nonindigenous species lawfully or historically introduced into this state for sport fishing recreation.

(b) Any species introduced into this state by the Department, by other governmental entities or by any person pursuant to this title.

B. The classification of Rainbow Trout as invasive species in the A-S represents a potentially significant adverse economic impact to the Department and the recreating public and was not disclosed or discussed in the EIS or LMP.

The Department sold 444,303 fishing licenses in 2014 with total sales of \$12,466,844.00. Federal Sports Fish Restoration matching federal funds to the Department totaled \$6,447,656 dollars.

In 2013 the Department conducted an angler survey (see below) and calculated angler user days by watershed for the state. Over 11% of angler use days were attributed to use of waters on the A-S. Accordingly, the Department estimates that 11% of its total license sales and United States Fish and Wildlife Service (USFWS) Wildlife and Sport Fish Restoration (WSFR) funds for 2014, or \$2,080,595.06, were based on sport fish stocking on the A-S. Revenues generated from the sale of fishing licenses support the Department's native fish recovery efforts across the state.

Recreational trout fishing is an important economic driver. A report commissioned by the Department, *2013 Economic Impact of Fishing in Arizona* (Fedler and Responsive Management, 2014) (attached) analyzed, inter alia, angler direct expenditures by watershed, and found \$102,006,716 in direct angler expenditures for fishing in lakes and creeks in the Little Colorado watershed alone (Table 10c: Economic Impacts of Fishing by Watershed and Waterbody).

Arizona Angler User Days, Fishing Economics and Angler Demographics (Arizona Game and Fish, Fisheries Branch Special Report, 2015) (attached) found that recreational spending by anglers in Arizona created 20,038 jobs with \$565 million in wages and \$61.9 million in state tax revenues. Report at 2. One-third of all trout angling (700,677 angler use days) comes from the Little Colorado River system alone. Of the top ten waters ranked by Trout Angler Use Days for 2013, five of these waters (Big Lake, Woods Canyon Lake, Willow Springs Lake, Fool Hollow Lake, and Bear Canyon Lake) are within the A-S. Report at 12.

In another report commissioned by the Department, *Arizona Anglers' Opinions, Attitudes, and Expenditures in the State* (Responsive Management, 2014) trout and bass are the most popular species fished, with trout being the most preferred species, and for a majority of anglers, fishing is one of their most important recreational activities. Report at iii; ix, x.

In the absence of any identification in the EIS or the LMP of Brown Trout and Rainbow Trout as an undesirable invasive species, it is difficult for the Department to determine how the USFS's classification of Rainbow Trout as a major aquatic invasive species in the other guidance documents will affect the Department's ability to manage and stock Rainbow Trout for recreational sport fishing on the A-S for the next 10 to 15 years.

The Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528-31, and the National Forest Management Act of 1976, 16 U.S.C. §§1600-1614, and which codified the multiple-use mandate of the Organic Act, 16 U.S.C. §§ 473-482 contemplate that the National forests will be used for multiple purposes, including outdoor recreation and fish and wildlife, and that the jurisdiction and authority of the States for management of fish and resident wildlife on the national forests are not affected.

The Forest Service *Manual* at 2643.1 states that hunting, fishing and trapping of fish and wildlife are subject to State fish and wildlife laws and regulations, unless one or both of the following apply:

- 1. State fish and wildlife laws and regulations conflict with Federal laws; or*
- 2. State laws and regulations would permit activities that conflict with land and resource management responsibilities of the Forest Service or that are inconsistent with direction in forest plans.*

. The A-S Standard for Invasive Species is (LMP, page 66):

Projects and authorized activities shall be designed to reduce the potential for introduction of new species or spread of existing invasive or undesirable aquatic or terrestrial nonnative populations.

A Standard is a constraint upon project and activity decision-making that must be complied with at the project level. A project or activity is consistent with a standard in only one way - “the project or activity is designed in exact accordance with the standard”. Variance from a standard is not allowed except by plan amendment.

The A-S Guideline for Invasive Species is (LMP, page 66):

Project areas should be monitored to ensure there is no introduction or spread of invasive species.

A project or activity is consistent with a Guideline by either being designed “exactly in accordance” with the guideline or contributes to the maintenance or attainment of the desired condition.

The USFS’s classification of Brown Trout and Rainbow Trout as invasive species, in conjunction with the LMP directives prohibiting the introduction or spread of invasive species, allow the USFS to make future project-specific determinations that Rainbow Trout stocking is “inconsistent” with the direction in the LMP, notwithstanding A.R.S. § 17-255, which expressly excludes stocked sport fish as an invasive species. The USFS has not undertaken the necessary analyses and determinations required by Federal laws before classifying these sport fish as invasive species.

The A-S failed to comply with the National Forest Management Act (NFMA), 16 USC 1604 and implementing 1982 planning regulations by not providing for multiple use (recreational fishing opportunities), 16 U.S.C. § 1604(e)(1); 1604(g)(3); not managing fish and wildlife habitat to maintain viable populations of existing native and desired non-native vertebrate species, 36 CFR 219.19; not conducting an analysis of biological, economic and social effects of categorizing a popular sport fish as an undesirable invasive species, 36 CFR 219.11(f)(9)(g) and 36 CFR 219.11(g); and not providing for public participation or adequate notice and opportunity to comment in the development of the EIS and LMP as it relates to managing sport fish as an invasive species, 16 U.S.C. § 1604(d); 16 U.S.C. § 1612.

The A-S further failed to comply with the National Environmental Policy Act (NEPA) by failing to disclose and permit informed public comment on the social or economic consequences of restricting or prohibiting the stocking of Rainbow Trout, and failing to analyze appropriate alternatives, and not analyzing the direct, indirect and cumulative impacts on the environment. NEPA. 42 USC § 4332 (C) and (E); 40 C.F. R. 1502.14.

Lastly, the A-S failed to comply with 36 CFR Part 241- Fish and Wildlife, §241.2 which states “The Chief of the Forest Service, through the Regional Foresters and Forest Supervisors, shall determine the extent to which national forests or portions thereof may be devoted to wildlife protection in combination with other uses and services of the national forests, and, in cooperation with the Fish and Game Department or other constituted authority of the State concerned, he will formulate plans for securing and maintaining desirable populations of wildlife species, and he may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes.” The A-S failed to cooperate with the Department on the designation of Rainbow Trout and Brown Trout as “major aquatic invasive species”.

Specific changes sought:

Revise the *Review and Assessment of Programs for Invasive Species Management in the Southwestern Region, 2012* (August 2012) and *Guidance for Invasive Species Management in the Southwestern Region* (June 2014) by removing references to Brown Trout and Rainbow Trout as aquatic invasive species or major aquatic invasive species in the Apache-Sitgreaves, Coronado, and Tonto NFs.

Issue No. 2: The description of impacts of nonnative fish stocking and management fails to acknowledge the Department’s Section 7 consultation with the Fish and Wildlife Service related to its sport fish stocking program

Portion of the decision to which the appellant objects

The Department objects to statements regarding the impacts of nonnative fish stocking and management in the EIS at 142-43:

The presence of nonnative fish species has resulted in impacts (e.g., competition, predation, hybridization, habitat alteration) across the Apache-Sitgreaves NFs.

The harmful interactions are well documented (e.g., recovery plans) and a primary cause of the current declining status of federally listed and sensitive fish species throughout the Southwest.

For example, fish stocking on adjacent lands and private inholdings (e.g., ponds, streams, reservoirs) continues to impact native fish species and their aquatic habitats on the Apache-Sitgreaves NFs. While providing extensive and highly desirable recreational fishing opportunities, AZGFD continue to impact native fish throughout the Apache-Sitgreaves NFs through stocking and management of nonnative fish.

Reasons for objecting

A-S's response to the Department's May 15, 2013 comment letter stated that the intent was to capture the historical, current and ongoing, and future impacts associated with all known causes and sources associated with nonnative species:

A-S Response: No modifications were made to the plan based on this comment. This comment is concerned with the EIS' characterization of the impacts to native fish from past and ongoing fish stocking programs conducted by the Arizona Game and Fish Department. The intent of the discussion within the EIS is to capture the historical, current and ongoing, and future impacts associated with all known causes and sources associated with nonnative species, and references are also made to impacts associated with private lands and both the San Carlos and White Mountain Apache tribal lands.

Violation of law

- A. A-S's conclusory statements about the impacts of the Department's stocked sport fish program to native fish species fails to incorporate the best available data.

The A-S's conclusory statements in the EIS fail to incorporate the information contained in the *USFWS Section 7 Consultation and Finding of No Significant Impact related to the Management and Mitigation of Impacts of Nonnative Stocked Species through Arizona's Conservation and Mitigation Program (CAMP)* in the LMP, in violation of 36 C.F.R. 219.12 (d) (1982 Planning Rule).

The LMP directives prohibiting the introduction or spread of invasive species allow A-S or the USFS to make future project-specific determinations that Rainbow Trout stocking is "inconsistent" with the direction in the LMP, notwithstanding the extensive and complex consultation conducted under Section 7 of the Endangered Species Act among USFWS, WSFR, and the Department that authorized the Department's proposed recreational fish stocking in identified A-S water bodies for the years 2011 through 2021.

The conclusory statements concerning impacts of the Department's sport fish stocking also lack the necessary quantitative data necessary to inform the public of the basis of its conclusions. NEPA, 40 C.F.R. 1502.1 (statements in an EIS shall be supported by environmental analyses).

In 2011, the Department and USFWS Arizona Ecological Services Office (AESO) and WSFR finalized an Environmental Assessment (EA) with conservation and mitigation measures, a Biological Assessment (BA), Biological and Conference Opinion (BCO), and Finding of No Significant Impact (FONSI) to gain clearances for the Department's Sport Fish Stocking Program for a 10-year period (September 1, 2011 to August 31, 2021) in Apache, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai and Yuma Counties, Arizona.

This EA was prepared in accordance with NEPA Council on Environmental Quality (CEQ) regulations [CFR Title 40, Parts 1500–1508]), CEQ guidance on the appropriate use of mitigation and monitoring and the appropriate use of mitigated findings of no significant impact (Federal Register 2011), U.S. Department of the Interior Regulations (CFR Title 43, Part 46), the USFWS NEPA Reference Handbook updated October 1998 (FWS 1998a), and the USFWS NEPA Guidance to States Participating in the Federal Aid Program updated in October 2000 (USFWS 2000).

The Finding of No Significant Impact (FONSI) Providing Grant Funds for Arizona Game and Fish Department's Sport Fish Stocking Program was signed by the USFWS on August 17, 2011.

Under the Selected Alternative of the Proposed Action, the Department will continue stocking of sport fish at 166 sites in selected rivers, streams, lakes, reservoirs, ponds and tanks in the state. The Selected Alternative also supports continued operations and maintenance of five AGFD hatcheries that rear sport fish (primarily trout) for stocking. All stocking sites on the A-S were covered in the EA, BA, and BCO for the Sport Fish Stocking Program.

The Service's AESO office examined the potential for any exposure to direct or indirect effects of Proposed Action for all listed, proposed, candidate, and 10(j) species in Arizona. AESO also assessed the potential impacts of stocking on species in Arizona for which a 90-day finding of may be warranted for listing had been made and a 12-month finding initiated or those species which AESO was considering developing a candidate form. In addition, the potential impacts on other special status species (sensitive species and species of special or conservation concern) were analyzed as part of the Proposed Action.

The analysis of effects of the Proposed Action on consultation species was based on determinations of jeopardy and adverse modification of critical habitat made in the BCO. These determinations took into account the status of each species across its geographic range. The analysis of effects from the Proposed Action and the other alternatives on other special status species was conducted at one or more of three spatial scales of resolution: individual stocking site, subcatchment, and regional scale. These represent a range of geographic scales at which direct effects generally have the most potential to occur (stocking site) to those where potential effects are progressively more separated in time and space (i.e., indirect effects) from proposed

stocking activities (subcatchment and regional). For the purpose of the analysis on other special status species, a stocking site for reservoirs, lakes, and ponds was defined as the entire water body and for streams was defined as the physical reach where stocking is proposed. For this NEPA analysis, subcatchments were defined as the U.S. Department of the Interior U.S. Geological Survey (USGS) Hydrologic Unit Code (HUC) 10 subwatersheds that surround individual stocking sites and the HUC 12 level subwatersheds downstream of those stocking sites to the confluence with a major water body that supports a self-sustaining community of several nonnative aquatic species.

The USFWS analyzed the Selected Alternative in the BCO and determined that the Proposed Action may affect, or was likely to adversely affect 14 listed species (seven with designated critical and three with proposed critical habitat), four candidate species, and two species under consideration for candidate species. The Selected Alternative analyzed by the USFWS in the BCO included a CAMP developed by the Department to implement actions that avoid, offset or reduce environmental impacts of the stocking action and ultimately contribute to conservation and recovery of species identified in both the BCO and EA.

Those identified “CAMP species” were defined in three groups: 1) Focal Species identified by the BCO that are federally listed species under the Endangered Species Act (ESA) or candidate species likely to be impacted by the stocking action; 2) Additional Conservation Species evaluated in the BCO comprised of federally listed or candidate species whose future conservation status may have a direct bearing on future sport fish stocking activities; and 3) other non-consultation sensitive aquatic species identified within the EA.

To implement CAMP activities, two tiers of actions were identified: 1) a set of 45 mandatory conservation and mitigation ESA measures that include activities targeted at Focal Species, and mandatory NEPA conservation and mitigation measures as part of the proposed action; and 2) an additional set of non-mandatory activities targeting CAMP species that will be implemented depending on available funding. To implement the CAMP, the Department committed to spend an average of \$500,000 per year for the 10-year CAMP period (2011-2021), representing a total Departmental financial commitment of \$5 million over 10 years. To date, the Department has expanded over \$4 million for this purpose although we are only in year 4. The \$5 million represents a net increase in funding over current funding of the Department’s programs toward conservation of CAMP species. The intent of the CAMP is to not only offset impacts of sport fish stocking, but to contribute to the recovery and conservation of CAMP species. The following table identifies some of the conservation and mitigation activities associated with the species they are intended to benefit:

Target Species	Conservation Measures
Multiple Species	Convert to sterile triploid trout: Within three years, the Department shall convert to triploid Rainbow Trout for all Rainbow Trout stockings with the exception of closed systems and urban lakes.
Chiricahua Leopard Frog	Establish/secure <u>three</u> populations: The Department shall secure existing or reintroduce three new conservation populations for Chiricahua leopard frog. Within 4 years begin 1 st population; 6 years = 2 nd ; 8 years =

	3 rd .
Headwater Chub	Establish/secure <u>three</u> populations: The Department shall secure existing or reintroduce three new conservation populations for headwater chub. Within 3 years begin 1 st population; 6 years = 2 nd ; 8 years = 3 rd .
Headwater Chub	Headwater chub assessment: The Department shall undertake an assessment of headwater chub populations in the East Verde River, Tonto Creek, and the Haigler Creek drainages to determine population structure and extent, nonnative species present as stressors, sites for potential reestablishment, and identification of specific research needs. The assessment shall serve as a guidance document for implementing conservation actions for the headwater chub. This assessment shall be completed within three years.
Roundtail Chub	Establish/secure <u>three</u> populations: The Department shall secure existing or reintroduce three new conservation populations for roundtail chub. Within 2 years begin 1 st population; 4 years = 2 nd ; 6 years = 3 rd
Roundtail Chub	Roundtail chub assessment: The Department shall develop an assessment of opportunities across the range of the species focusing on those with the greatest potential for conservation benefits for the species. The assessment shall serve as a guidance document for implementing conservation actions for roundtail chub. This assessment shall be completed within three years.
Loach Minnow	Establish/secure <u>two</u> populations: The Department shall secure existing or reintroduce two new conservation populations for loach minnow. Within 4 years begin 1 st population; 6 years = 2 nd
Northern Mexican Gartersnake	Establish/secure <u>two</u> populations: The Department shall secure existing or reintroduce two new conservation populations for northern Mexican gartersnake. Within 5 years begin 1 st population; 7 years 2 nd .
Northern Mexican Gartersnake	Northern Mexican gartersnake research: In providing for gartersnake populations either through securing existing but threatened populations or establishment of new conservation populations, a source for individuals to reestablish conservation populations is needed, as well as information on propagation, release options, and techniques for successfully securing existing threatened populations. Member organizations of the Gartersnake Conservation Working Group have initiated applied research in these arenas, and the Department shall contribute to these types of efforts during the 10-year program. Once sufficient information is obtained on techniques to reestablish populations and/or secure existing threatened populations, the Department shall initiate the population reestablishment and/or securing actions. Within two years the Department will develop a plan to support and/or implement research in these arenas. Supporting and/or implementing this research will then follow the plan.
Narrow-headed Gartersnake	Establish/secure <u>two</u> populations: The Department shall secure existing or reintroduce two new conservation populations for narrow-headed gartersnake. Within 5 years begin 1 st population; 7 years = 2 nd .

Narrow-headed Gartersnake	Narrow-headed gartersnake research: In providing for gartersnake populations either through securing existing but threatened populations or establishment of new conservation populations, a source for individuals to reestablish conservation populations is needed, as well as information on propagation, release options, and techniques for successfully securing existing threatened populations. Member organizations of the Gartersnake Conservation Working Group have initiated applied research in these arenas, and the Department shall contribute to these types of efforts during the 10-year program. Once sufficient information is obtained on techniques to reestablish populations and/or secure existing threatened populations, the Department shall initiate the population reestablishment and/or securing actions. Within two years the Department will develop a plan to support and/or implement research in these arenas. Supporting and/or implementing this research will then follow the plan.
NEPA Species: Lowland leopard frog, desert sucker, Sonora sucker, bluehead sucker, LC sucker, longfin dace, speckled dace	Address/remove <u>ten</u> stressors (e.g., remove nonnative species, installing barriers to stop spread of nonnative species, improve habitat, secure water rights): The Department shall contribute to the conservation of other special status aquatic and semi-aquatic species through the removal of key stressors. A total of ten stressors will be addressed with implementation of this action. The timeframe for completion will be four stressors addressed by year four, two more by year six, two more by year eight, and two more by year ten. The Department shall address two stressors impacting these species and associated aquatic communities within each of the following sub-watersheds/ catchments: Verde River sub-basin, Salt River sub-basin, Middle Gila sub-basin, Little Colorado River sub-basin, and Bill Williams sub-basin.
NEPA Species: Lowland leopard frog, desert sucker, Sonora sucker, bluehead sucker, LC sucker, longfin dace, speckled dace (but will benefit all/most native aquatic species)	Watershed planning in priority watersheds: The Department shall contribute to the conservation of other special status aquatic and semi-aquatic species through planning using a watershed approach. The Department shall apply its Watershed-based Fish Management Process (AGFD 2009) to develop aquatic species management plans for all priority watersheds in the state. The planning process will include consideration for special status species and identify conservation opportunities for incorporation within the planning framework. Special status species will benefit through identification of focal management areas and restoration needs that can be prioritized into multiple land management programs and funding sources in a coordinated approach. For the first priority watershed, planning will begin within the first year and be completed by the third year.

On August 17, 2011, based on the conservation and mitigation actions agreed to by the USFWS and the Department, public and agency comment, and the analysis contained in the EA, BA, and

BCO, the USFWS issued a finding that the Selected Alternative will not have significant effects on the quality of the human environment within meaning of Section 102(2)(C) of NEPA.

All stocking sites located on the A-S are covered in the BA, EA, and the BCO.

The conclusion of the USFWS for the entire consultation is found on page 445-446 of the BCO:

After reviewing the current status of the listed, candidate, and likely candidate species and their designated or proposed critical habitat, the environmental baseline for the action areas, effects of the proposed action (both site-specific and area-wide) and the cumulative effects, it is the AESO's biological opinion that the implementation of the proposed action, including conservation measures that are part of the proposed action, is not likely to jeopardize the continued existence of any consultation species considered in these analyses, nor is it likely to destroy or adversely modify any designated or proposed critical habitat.

Specific change(s) sought

The EIS must acknowledge the *USFWS Section 7 Consultation and Finding of No Significant Impact Related to the Management and Mitigation of Impacts of Nonnative Stocked Species through Arizona's Aquatic Conservation and Mitigation Program*. Specifically, A-S must defer to the findings of the USFWS that the Department's implementation of the proposed action, including conservation measures that are part of the proposed action, is not likely to jeopardize the continued existence of any consultation species.

Issue No. 3: Transferring aquatic species through management activities.

Portion of the decision to which the appellant objects

The Department disagrees with the guideline for aquatic habitat and species on page 127 of the EIS and page 26 of the LMP:

To prevent degradation of native species habitat and the incidental or accidental introduction of diseases or nonnative species, aquatic species should not be transferred through management activities from one 6th code watershed to another.

Reasons for objecting

This guideline as written is not clear, is much broader than the A-S's stated intent, and can adversely impact the Department's ability to manage all aquatic species. Management activities routinely necessitate the transfer of desirable aquatic species from one 6th code watershed to another. Such management activities include both native and nonnative sport fish stocking and reintroductions of various native aquatic species. The Department suggested edits to this language in its' 2013 comment letter. The A-S responded as follows:

A-S Response: No modifications were made to the plan based on this comment. The intent of this guideline is to prevent the spread of nonnative species or diseases that could occur through site specific actions implemented under the plan (e.g., water transfers, movement of equipment).

The USFWS BCO at 407-446 looked at three general areas in evaluating the potential effects of the Department's proposed statewide fish stocking on listed and candidate native aquatic species: 1) inadvertent transport of aquatic organisms (e.g., aquatic invasive species, or disease and parasites) via stocking actions to receiving water; 2) illegal introduction or transport of unwanted aquatic organisms; and 3) physical effects to aquatic or riparian habitats from anglers pursuing stocked sport fish at stocking sites.

The BCO presented an area-wide analysis for the proposed action to evaluate these potential risks to listed and candidate native aquatic species. They identified the routes of transport or unwanted aquatic organisms (e.g., importation to hatcheries, contamination at hatcheries, live baitfish, inter-drainage transfers), that were relevant to the proposed action. For each route of transport of unwanted aquatic organisms, conservation measures to reduce such risks were identified. The USFWS determined that the effects of the proposed action on an area-wide scale is not likely to jeopardize the continued existence of any consultation species or result in destruction or adverse modification of designated or proposed critical habitat.

Specific change(s) sought

Revise the Guideline as follows:

"The transfer of aquatic species from one 6th level HUC watershed to another may occur when projects and management activities follow established protocols and Best Management Practices such as AZGFD's Hazard Analysis of Critical Control Points (HACCP) plans or as described in the *Biological and Conference Opinion for Wildlife and Sport Fish Restoration Funding of Arizona Game and Fish Department's Statewide and Urban Fisheries Stocking Program for 2011-2021*".

Issue No. 4: Transfer of water between drainages or unconnected waterbodies

Portion of the decision to which the appellant objects

The Department objects with the guideline for invasive species on page 125 of the EIS and page 66 of the LMP:

Projects and activities should not transfer water between drainages or between unconnected waterbodies within the same drainage to avoid spreading disease and aquatic invasive species.

Reasons for objecting

The Department commented on management activities carried out by the Department routinely necessitate the transfer of water between drainages or between unconnected water bodies within the same drainage, such as during sport fish stocking activities or native fish reintroductions. It is not possible to move fish between drainages or between unconnected waterbodies within the same drainage without the transfer of water as well.

A-S Response: No modifications were made to the plan based on this comment. The intent of this guideline is to prevent the spread of nonnative species or diseases that could occur through site specific actions implemented under the plan (e.g., water transfers, movement of equipment) and would apply to all projects and activities.”

Specific change(s) sought

Revise this guideline as follows:

“The transfer of water between drainages or between unconnected water bodies within the same drainage may occur when projects and management activities follow established protocols and Best Management Practices such as AZGFD’s Hazard Analysis of Critical Control Points (HACCP) plans or as described in the *Biological and Conference Opinion for Wildlife and Sport Fish Restoration Funding of Arizona Game and Fish Department’s Statewide and Urban Fisheries Stocking Program for 2011-2021*”.

Issue No. 5: Damming or impounding free flowing waters

Portion of the decision to which the appellant objects

The Department objects with the guideline for aquatic habitat and species on page 127 of the EIS and page 26 of the LMP:

Projects and activities should avoid damming or impounding free-flowing waters to provide streamflows needed for aquatic and riparian-dependent species.

Reasons for objecting

Management activities carried out by the Department for native species recovery and management, or aquatic species habitat improvement, include projects such as the construction of fish barriers for native fish conservation or instream habitat structures to improve aquatic habitats, which have the potential to dam or impound free-flowing waters.

The Forest’s response to the Department’s May 15, 2013 comment letter states that other plan guidelines, desired conditions, and objectives provide for native fish species recovery and improvements to aquatic habitat and species. However, according to the LMP (Page 15), “*In the*

event of conflicts with other sections of this plan, the more restrictive plan decision generally applies.”

A-S Response: No modifications were made to the plan based on this comment. The “Aquatic Habitat and Species” section within chapter 2 of the plan has four desired conditions, two objectives, and two guidelines that provide for native fish species recovery and improvements to aquatic habitat and species.”

Specific change(s) sought

Revise the guideline as follows:

Projects and activities should avoid damming or impounding free-flowing waters to provide streamflows needed for aquatic and riparian-dependent species, except as needed for wildlife and habitat management activities including fish migration barriers necessary for native fish conservation and construction of stream habitat structures/improvements to benefit native fish conservation, threatened or endangered species restoration, sport fish management, and/or hydrological functionality.

SECTION 2. ELK

Elk are an easily identified and desirable big game animal currently distributed across northern Arizona. Elk were extirpated from the state in the early 20th century. The subsequent efforts of conservationists to reintroduce Rocky Mountain elk into Arizona in 1913 on the A-S are a conservation success story that was repeated throughout the western United States. While the number of elk present on the A-S is a management issue between the Department and the A-S, the A-S has presented no evidence in the Final EIS that the elk present in Arizona prior to their extirpation from the state functioned in a different ecological manner from the elk present on the A-S today.

The economic impact to the state and local counties and communities from big game related hunting activities is well documented (2011 National Survey of Fishing, Hunting and Wildlife Associated Recreation). Overall 76% of all big game hunters hunting in Arizona utilized public lands including National Forest Lands in pursuit of their quarry and these same big game hunters spent \$137,069,000 on hunting related expenses in Arizona in 2011. In 2013 24,435 elk hunters spent 130,864 hunter days to harvest 8,792 elk in Arizona (Hunt Arizona 2014 Edition Survey).

The A-S has benefited significantly from the efforts of non-governmental organizations to improve habitat conditions for elk and other big game through the direct expenditure of private funding on the A-S. These partnerships have generated more than benefits to elk alone. Deer, turkey, antelope, non-game birds, small game populations, native fish, and livestock permittees on the A-S have benefitted from efforts to improve ecological conditions for elk.

Given the social, economic, and wildlife habitat benefits resulting from current elk management on the A-S, the Department questions the purpose in defining elk as a nonnative species and singling out elk browsing as the cause for the lack of aspen regeneration in the wet mixed conifer and spruce-fir community. As the A-S itself acknowledges, these claims in the LMP, are not supported by scientific data or genetic studies.

Issue No. 6: Rocky Mountain elk defined as a nonnative species that has become naturalized

Portion of the decision to which the appellant objects

The Department objects to the characterization of Rocky Mountain elk as a nonnative species on page 159 of the LMP, and page 205 of the EIS.

Naturalized – A species that is not native to an area, but one which has adapted to that area and has a stable or expanding population. In some cases, species move into a new area by themselves, but in most instances they are human-associated introductions. An example of a desirable nonnative species that has become naturalized is the Rocky Mountain elk, first brought to the forests in 1913 (Forest Service et al., 1990) to replace the extinct native Merriam’s elk (Purdue et al., 2002, Thomas and Toweill, 1982). An example of an undesirable nonnative species is the crayfish which has contributed to the decline of aquatic vegetation and native species such as the threatened Chiricahua leopard frog (AZGFD, 2003)

(Emphasis added).

Reasons for objecting

The EIS incorrectly defines Rocky Mountain elk as a nonnative species. In the Department’s comment letter of May 15, 2013, the Department emphasized that Rocky Mountain elk is a desired native species on the A-S. In its response, the A-S simply moved its characterization of the status of Rocky Mountain elk from one section of the LMP to another.

A-S Response: This sentence in the background for “Wildlife and Rare Plants” section of the plan has been modified to read,

“Other species, some desirable and some not, have been introduced and have become naturalized.”

A definition for ‘naturalized’ has been added to the plan’s glossary.”

In the Master MOU, the USFS agrees to “recognize the Commission’s and the Department’s responsibility to make determinations as to which fish and wildlife species are native or

naturalized to the state of Arizona, and in which areas of the state those species should be established or maintained.” The Arizona Game and Fish Commission and Department have determined that Rocky Mountain elk is a native species in Arizona.

Furthermore, in response to other commenters on the taxonomic status of Rocky Mountain elk, the A-S at 684 acknowledges “limited information regarding what is called Merriam’s elk being extirpated from the White Mountains of Arizona and nearby New Mexico in the early 1900s; therefore, there is debate about this animal [...]”, and “With limited samples and limited DNA segments, questions will remain.” It is arbitrary and capricious for the A-S to unilaterally classify Rocky Mountain elk as a nonnative species based on such questionable data.

Specific change(s) sought

The wording for this glossary definition should be revised as follows:

“**Naturalized** – A species that is not native to an area, but one which has adapted to that area and has a stable or expanding population.”

Issue No. 7. Aspen lacking in wet mixed conifer and spruce-fir due to elk browsing

Portion of the decision to which the appellant objects

The Department disagrees with the representation on pages 148 and 149 of the EIS that in the wet mixed conifer and spruce-fir community there is a lack of aspen regeneration due to elk browsing:

With respect to DI, there is an over representation (37 percent) of vegetation structural states that are lacking or have limited aspen regeneration due to elk browsing and an under representation (38 percent) of large to very large size, single-storied or multistoried trees with closed canopy cover.

With respect to DI, there is an over representation (29 percent) of vegetation structural states that are lacking or have limited aspen regeneration due to elk browsing.

Reasons for objecting

These portions of the EIS incorrectly single elk out as the sole contributing factor for lack of aspen regeneration in the wet mixed conifer and spruce-fir community. Contrary to the more balanced approach found in numerous other locations throughout the EIS, the Forest focuses on elk browsing, while avoiding any discussion regarding other contributing factors, including fire suppression, timber management and livestock browsing. As the EIS states on pages 4, 159 and 199:

The presence of aspen in several PNVTs is declining because of insects, disease, overbrowsing by wildlife and livestock, absence of natural fire, and unnaturally dense stands of conifers that shade out and inhibit aspen growth. The desired

condition is to have a sustainable amount of aspen on the forests because aspen stands have scenic values and provide wildlife habitat.

According to Romme et al. (2001), the most important agent of disturbance in aspen forests of the southern Rocky Mountains before 1900 was fire, although other natural disturbances were locally important. Without periodic fire or with high levels of herbivory, conifers will replace aspen. As a result, this type is significantly altered today and is very difficult to identify because of conifer succession.

Over the past decade, widespread mortality of mature aspen occurred due to a combination of drought, frost, and defoliation events, in conjunction with conifer competition and failure of aspen regeneration to recruit to larger sizes because of herbivory and damage from domestic and wild ungulates such as Rocky Mountain elk.

The A-S's own response to the Department's comment letter acknowledges the historic role of fire and other disturbance regimes for aspen regeneration:

A-S Response: Based on Smith's (2006a and 2006b) literature reviews, stand structure for these two PNVTs was historically single storied, dense closed canopy, with a plurality of shade-tolerant trees, and with aspen regeneration where conifers were removed by fire, disease, etc., within their natural disturbance regimes.

As the Wallow Fire and other recent large fires within these vegetation communities on the A-S have demonstrated, successful recruitment and retention of aspen does occur in the presence of elk browsing following conifer removal resulting from large fires. Indeed, the A-S's discussion on pages 159 and 243 of the EIS point to an expected increase in acreage dominated by aspen as a consequence of the Wallow Fire:

Several factors have been hypothesized as causal agents in the decline of aspen: climate change, fire suppression, conifer competition, ungulate browsing, drought, insects, and pathogens (UFRWG, 2010; Crawford, 2011). As a consequence of the Wallow Fire, the acreage dominated by aspen is expected to increase on the Apache-Sitgreaves NFs. However, given all of the agents of decline mentioned, the longevity of this increase in aspen is unknown.

However, while aspen acreage across forested PNVTs is expected to increase, the extent of that is unknown, as is aspen's ability to persist over time given domestic and wild herbivory, and impacts from removal of hazard and salvaged trees.

Specific change(s) sought

The wording on page 148 of the EIS should be revised as follows:

“With respect to DI, there is an over representation (37 percent) of vegetation structural states that are lacking or have limited aspen regeneration and an under representation (38 percent) of large to very large size, single-storied or multistoried trees with closed canopy cover.”

“With respect to DI, there is an over representation (29 percent) of vegetation structural states that are lacking or have limited aspen regeneration.”

SECTION 3: RECOMMENDED WILDERNESS DESIGNATIONS

Portion of the decision to which the appellant objects

Issue No. 8: Failure to comply with the National Environmental Policy Act (NEPA): recommended wilderness and associated management changes resulting from LMP implementation

Issues raised by the Department in formal comment letters to the A-S throughout the development of the EIS related to recommended wilderness have not been adequately addressed, fully disclosed, and/or analyzed. The EIS fails to include, per CEQ regulations at 40 C.F.R. § 1502.16, § 1503.4, and § 1502.13 (below), an analysis of direct and indirect effects; possible conflicts between the proposed wilderness recommendations in the LMP and the objectives of state and local land use plans, policies and controls; a response to the Department’s comments; and fails to establish an adequate purpose and need consistent with the selected alternative for recommended wilderness areas. The USFS will manage areas identified as ‘proposed wilderness’ as de facto wilderness as a result of decisions within the LMP, which circumvents Congressional intent by identifying and managing areas with wilderness characteristics through the LMP process without the necessary NEPA and Congressional vetting.

1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:

(a) Direct effects and their significance (Sec. 1508.8).

(b) Indirect effects and their significance (Sec. 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)

1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to: (1) Modify alternatives including the proposed action. (2) Develop and evaluate alternatives not previously given serious consideration by the agency. (3) Supplement, improve, or modify its analyses. (4) Make factual corrections. (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. (b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement. (c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Reasons for objecting

NEPA Compliance Failure: 1502.16 Environmental consequences

Conservation of wildlife resources upon all lands within Arizona is the trust responsibility of the Department, and requires active management of wildlife and habitat resources to ensure that these resources are conserved for present and future generations. However, the EIS fails to

disclose and analyze impacts to the Department's ability to manage trust wildlife resources, as requested in the Department's May 5, 2010 and May 15, 2013 comment letters to A-S (attached), submitted in response to the Draft EIS. The EIS does not analyze potential impacts of the proposed wilderness to specific Department management actions necessary to maintain and enhance Arizona's wildlife heritage and wildlife recreational opportunities into the future. The EIS does not identify the potential economic impacts or conflicts with existing state plans to carry out wildlife management goals and objectives including: the Department's State Wildlife Action Plan; Wildlife 20/20 Strategic Action Plan; and Management Focus Area Plans for Units 1 and 27.

Without a full NEPA disclosure of potential impacts to the Department and the public, as well as assurances protecting the state's ability to proactively manage wildlife including specific management activities, the Department does not support an expansion of wilderness on the A-S, and requests that a full analysis of the cumulative impacts of further loss of public lands that provide for multiple-use and wildlife related recreational and economic opportunities be conducted before an expansion of wilderness is analyzed, recommended, or approved. Further, the Department requests that prior to approval of a wilderness designation or implementation of management changes to maintain wilderness characteristics for future designation for any new lands, the USFS first fully analyze that decision's impact to the Department's ability to fulfill its trust responsibility to manage the state's wildlife resources. Because the USFS intends the EIS to represent the NEPA documentation and analysis for the additional wilderness designations per the A-S letter dated August 12, 2015 to the Chief (attached) by stating '[...] *the Final Environmental Impact Statement for the Apache-Sitgreaves National Forest's Revised LMP contains the NEPA analysis necessary to support a legislative proposal (FSH 1909.12, Chapter 73.12, 2007)*' AND Because the USFS intends to change the management of these areas based on these wilderness recommendations as stated in the EIS '*Areas recommended for wilderness designation by the Regional Forester will be managed to maintain their wilderness characteristics until further action is initiated by the Forest Service to forward the recommendations to Congress for designation. The list of recommended areas will be included in the Record of Decision for the revised plan*', the USFS must treat the recommendations as significant changes in management that will be implemented upon signage of the ROD. As such, the USFS must ensure NEPA compliance, including full analysis of direct and indirect effects and their significance to and possible conflict with the management needs and plans of the Department and the state of Arizona.

Despite carefully crafted wilderness designation language and subsequent agreements through Memorandum of Understandings with Federal agencies, wilderness designations inevitably hamper or preclude the Department from achieving its management objectives in such areas, resulting in substantive and costly compliance hurdles that must be addressed before wildlife management actions can be implemented. Based upon its long history of difficulty with wildlife management in wilderness areas, the Department anticipates challenges, complications, or obstruction of its ability to implement management activities in areas with wilderness designations.

The restrictions have occurred due to inconsistent interpretations of allowable wildlife management activities in wilderness by USFS Regional offices, by individual Forests, and by USFS employees. In other instances, the Department has experienced significant delays and prohibitions due to inadvertent omissions of necessary wildlife management actions in the enabling and planning documents associated with a new wilderness area.

The establishment of new wilderness management direction requires appropriate public involvement and conformance with both the National Forest Management Act and National Environmental Policy Act processes (per *Forest Service Manual 2322.2 - Revision of Management Direction*). Further, the USFS Land Management Planning Handbook Chapter 70.61 – Participation in the Wilderness Recommendation Process, states:

*‘Early and during each step of the process identified in this chapter, the Responsible Official: 1. Shall provide opportunities for public participation and collaboration, **intergovernmental coordination with State and local governments**, and Tribal consultation, as required by the broader planning process (36 CFR 219.4 and FSH 1909.12, ch. 40). Through such opportunities, **engage the public and other governments early and throughout the process to provide feedback and input on the inventory, evaluation, analysis, and recommendation steps identified in this chapter.** 2. May provide additional participation opportunities specifically on this topic as necessary. Maps, analysis, and other documentation developed through each step of the process must be made available timely to the public to increase transparency and enable feedback and input.’*

This Handbook also states ‘*d. Recommendation (sec. 74): The Responsible Official shall decide, based upon the analysis and input from Tribal, State, and local governments and the public, which areas, if any, to recommend for inclusion in the National Wilderness Preservation System.*’

(Emphasis added)

NEPA Compliance Failure: 1503.4 Response to comments

The EIS does not comply with NEPA or CEQ regulations by failing to consider and respond to the Department’s special expertise, information, and requests regarding disclosure of impacts to the Department and the public resulting from wilderness recommendations and associated management changes implemented through the LMP.

NEPA Compliance Failure: 1502.13 Purpose and need

The EIS fails to adequately establish a purpose and need for recommended wilderness areas and associated changes in management implemented through the LMP.

Federal lands comprise 42% of Arizona’s lands, of which more than 43% have special land use designations, with significant restrictions relating to the public’s ability to recreate and the Department’s ability to fulfill its trust responsibilities for wildlife management. Currently, 77%

of Arizona lands harbor restrictions on public access and recreation through ownership (private, state, and tribal) or federal special land use designations, leaving only 23% free of restrictions and open for public use.

Currently, 4.5 million acres in Arizona already have a wilderness designation. With an additional 5.8 million acres of special land use designations in the form of National Monuments, Parks, Wildlife Refuges, Conservation Areas, Areas of Critical Environmental Concern, Wild and Scenic Rivers, and Wilderness Characteristics Areas, the State has experienced a systematic loss of diverse recreational opportunities and an erosion of the Department's ability to proactively manage wildlife. Due to special designations on these roughly 10 million acres, the Department experiences extensive and widespread project delays, elevated costs, man-hours and legal challenges, which has resulted in decreased efficiency in the conservation and management of Arizona's wildlife resources.

Both the Multiple-Use Sustained-Yield Act of 1960 and the Federal Land and Policy Management Act of 1976 (FLPMA) restrict federal land management agencies from affecting the State's jurisdiction and responsibilities, and managers of public lands are mandated by FLPMA, the "Organic Act", to provide multiple-use recreational opportunities on public lands to both present and future generations. The Department perceives the conversion of public lands to a special use status as a breach of the FLPMA mandate, with those lands designated as wilderness forever lost for multiple-use. In spite of existing legislation, neither the USFS nor Bureau of Land Management (BLM) have established objectives for the scope of public lands in Arizona to be administered in full multiple-use status, and free from restrictive designations. The Department supports public land use that provides Arizona's public and resources with a net benefit, and does not support the conversion of public lands from multiple-use to land use designations that will result in a net loss of wildlife resources, wildlife related recreational opportunities, and wildlife dependent economic benefit.

Further, the Department notes a significant discrepancy between the *Apache-Sitgreaves National Forests Wilderness Evaluation Reports* dated October 2012 for the Escudilla Wilderness Addition Northeast, Escudilla Wilderness Addition Southeast, and Bear Wallow Wilderness Addition Northwest and the same documents dated November 2010. Within each of the 2012 documents' Need Evaluation section, the overall need rating is 'Medium'. However, in the very same documents dated November 2010, the overall need rating for each of these areas is 'Low', with Factor 4 and 6 for each of these areas having been revised upward from 'Low' in 2010 to 'Medium' in 2012. The Department finds no justification for this upward revision. As such, the overall need ratings for these three areas should be appropriately considered as 'low'. Further, the population growth estimates used to establish 'Regional Demand for Wilderness' are based on outdated data (1990-2000). CEQ regulations and NEPA principles and guidelines require that decisions be made using the best available information. The EIS also fails to include information regarding trends for wilderness use as cited in Prescott NF's Recreational Specialist Report: *'overall wilderness use is expected to decline by 15 percent on a per capita basis between 2006 and 2056 due to increases in population proportions for categories that are currently negatively correlated with participation in wilderness recreation'*. The Department requests this updated

information be incorporated into the EIS and the need rating be reverted appropriately to 'low' as identified in the original 2010 evaluation.

The information provided within the A-S evaluations (below) further establishes that additional wilderness is unnecessary and unsupported in the A-S planning area.

- There are significant wilderness lands (over 2.5 million acres) on the Apache-Sitgreaves NFs and within a 100-mile radius of this potential wilderness and the forests.
- There are significant nonwilderness lands (over 5.4 million acres) available for unconfined outdoor recreation outside of designated Wilderness and the Blue Range Primitive Area on the Apache-Sitgreaves NFs and within a 100-mile radius of the forests.
- Demand for wilderness is generally greater near population centers, and there are no population centers within a 100-mile radius of this potential wilderness.

Further, the A-S rated the Escudilla proposed wilderness area as 'Medium' for *'provides elements of biological diversity and naturalness including unique habitats, TES or rare plants and wildlife'*, with a justification *'the potential wilderness would supplement the existing biological diversity and naturalness of Escudilla Wilderness. Additional areas of spruce-fir, ponderosa pine, and wet mixed conifer forests increase the vegetation diversity'*. The Department contends that supplementing the existing wilderness elements does not add to the overall wilderness system nor does it justify a need rating higher than 'Low'. The Department requests this be identified appropriately as 'Low' for this category. Further, stating the proposed wilderness 'is contiguous to Escudilla Wilderness' within the Need evaluation is inappropriate. The fact that an area is contiguous to an existing wilderness does not provide justification for the evaluation of need. This language needs to be removed from the Need section.

The Availability of these potential wilderness areas should be identified as low given the needs of the Department for potential fish and wildlife management activities as identified within the Department's comment letters including but not limited to: periodic fish surveys and non-native fish removal utilizing nets or battery and gas powered electrofishing equipment, construction or maintenance of fish barriers, chemical stream renovations, fish stocking, low-level aerial wildlife survey, research, and law enforcement flights, wildlife capture, construction of temporary release pens, construction and maintenance of wildlife waters, providing salt and mineral supplements, depredation and wildlife mortality investigations, conducting habitat restoration activities such as application of prescribed fire, and law enforcement and public safety activities.

Circumvention of the Spirit of NEPA and Congressional Intent: Failure to Provide Transparency

With the implementation of the LMP, two Proposed Wilderness Areas will be managed to maintain the wilderness characteristics until such a time as Congress officially designates or releases them from consideration, constituting a significant and immediate change in management. During this state of de facto wilderness management, the Department anticipates restrictions above and beyond the restrictions experienced with actual wilderness designations.

Further, the areas recommended in the EIS were not included within the original wilderness designations with purposeful intent by Congress. The subsequent expansion of previously

designated wilderness is an overreach of the A-S and disingenuous to the public; subverting original collaboration, negotiation, and agreements. The Department requests the USFS eliminate the two wilderness recommendations citing inadequate impact analysis and failure to establish a purpose and need.

As cited above, on November 18, 2015 the Department became aware of a letter dated August 12, 2015 from Regional Forester Calvin Joyner to the Chief of the Forest (Chief). The letter was to inform the Chief that the Record of Decision (ROD) for the A-S had been signed with two areas encompassing 7,047 acres being recommended for wilderness designation. The letter further states, '[...] *the Final Environmental Impact Statement for the Apache-Sitgreaves National Forest's Revised LMP contains the NEPA analysis necessary to support a legislative proposal (FSH 1909.12, Chapter 73.12, 2007)*'.

The language in the August 12, 2015 letter to the Chief is in direct contradiction to numerous statements made in the Proposed Management Plan for the Apache-Sitgreaves National Forests, the Draft EIS, and the Wilderness Resources and Inventoried Roadless Areas Specialist Report, November 2012, which make it clear (below) that recommended wildernesses are preliminary recommendations that will receive further review, including the applicable NEPA analysis. Based on this wording, the Department had concluded at the time of our review of the Draft EIS and submission of our comment letters that further site-specific NEPA would be done if a legislative proposal is forwarded to Congress regarding recommended wilderness on the A-S.

Further, the excerpts below lead the Department and the public to believe that no significant management action or recommendation to Congress will take place before further NEPA analyses are completed. The letter to the Chief as well as the A-S's intention to manage these areas as de facto wilderness as identified within the ROD is an egregious lack of transparency.

Excerpts from the A-S LMP, EIS, and Wilderness Report:

Proposed LMP Page 124: *"These are preliminary administrative recommendations that will receive further review, including the applicable NEPA analyses, and possible modification by the Chief of the Forest Service, Secretary of Agriculture, and President of the United States. Congress has reserved the authority to make final decisions on wilderness designation."*

Draft EIS Page 22, 24, and 27: *"These preliminary administrative recommendations would receive further review, including applicable NEPA analyses, and possible modification by the Chief of the Forest Service, Secretary of Agriculture, and the President of the United States."*

Draft EIS Page 352: *"Any area that is recommended for wilderness (Recommended Wilderness Management Area) through the planning process is a preliminary administrative recommendation that would receive further review, including applicable NEPA analysis, and possible modification by the Chief of the Forest Service, Secretary of Agriculture, and the President of the United States. Congress has reserved the authority to make final decisions on wilderness designation."*

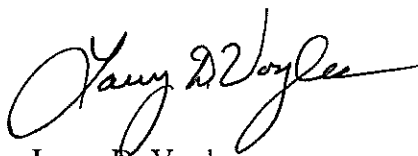
The Wilderness Resources and Inventoried Roadless Areas Specialist Report, Page 2: “Any area that is “recommended for wilderness” (Recommended Wilderness MA) through the planning process is a preliminary administrative recommendation that will receive further review, including applicable NEPA analysis, and possible modification by the Chief of the Forest Service, Secretary of Agriculture, and the President of the United States. Congress has reserved the authority to make final decisions on wilderness designation.”

Specific change(s) sought

The Department requests the reviewing officer remand the EIS and LMP to the deciding officer to comply with the CEQ requirements set forth in this appeal, and to reconsider the selected alternative based on an effects analysis that complies with the law, identifying direct and indirect effects, possible conflicts between the proposed wilderness recommendations in the A-S LMP and the objectives of state and local land use plans, policies and controls, before any management changes are implemented or recommendations are forwarded to Congress. The Department requests that the proposed wilderness areas be eliminated based on: the exclusion of necessary information and impact analysis, the Department’s recommended changes to the evaluation ratings, and the possible conflicts between the proposed wilderness recommendations in the A-S LMP and the objectives of state and local land use plans, policies and controls.

The Department has presented historical and specific information on the impacts of wilderness on the Department’s ability to manage wildlife resources in Arizona, as well as the Forest’s failure to analyze or disclose the impacts of new wilderness designations on the Department’s ability to manage wildlife resources. The Department further identifies a significant flaw within the NEPA analysis in the failure to establish an adequate purpose and need for the additional wilderness areas based on the omission of information and analysis the Department requested throughout the development of the DEIS. The Department hereby submits this Appeal of Decision pursuant to 36 CFR 219.17(b)(3) (2012 planning rule) and 36 CFR 219.35, Appendix A (2000 planning rule, as amended July 2010).

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Voyles", written in a cursive style.

Larry D. Voyles
Director

Attachments